

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 7/26/2012

Action Requested By:
Legal

Agenda Item Type
Resolution

Subject Matter:

City Parking Garage Lease

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Parking Garage Lease Agreement between the City of Huntsville and The Health Care Authority of the City of Huntsville, Alabama. (Huntsville Hospital)

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: 

Date: 7-6-12

RESOLUTION NO. 12-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an Parking Garage Lease Agreement by and between the City of Huntsville and The Health Care Authority of the City of Huntsville, Alabama, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "PARKING GARAGE LEASE AGREEMENT BETWEEN THE CITY OF HUNTSVILLE AND THE HEALTH CARE AUTHORITY OF THE CITY OF HUNTSVILLE, ALABAMA (HUNTSVILLE HOSPITAL)," consisting of thirty-eight (38) pages including Exhibits A through D, and the date of July 26, 2012 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 26th day of July, 2012.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 26th day of July, 2012.

Mayor of the City of
Huntsville, Alabama

CITY PARKING GARAGE LEASE AGREEMENT
(HUNTSVILLE HOSPITAL)

THIS CITY PARKING GARAGE LEASE AGREEMENT (HEALTH CARE AUTHORITY) (this "Lease") is made and entered this _____ day of _____, 2012, by and between **THE CITY OF HUNTSVILLE**, an Alabama municipal corporation, as lessor ("City") and **THE HEALTH CARE AUTHORITY OF THE CITY OF HUNTSVILLE, ALABAMA**, a public corporation under the laws of the State of an Alabama ("Lessee").

WITNESSETH:

WHEREAS, pursuant to an Amended and Restated Development Agreement dated as of _____, 2012 (the "Development Agreement") among the City, Twickenham Square Partners, LLC ("Twickenham"), and Gallatin Street Partners, LLC ("Gallatin"), the City has agreed to construct and develop a three-floor parking garage within the City to contain spaces reserved for use solely by Gallatin and Twickenham and their tenants and other related parties, and other spaces that would be open to the general public on a first-come, first-served basis; and

WHEREAS, the proposed parking garage is located near a hospital operated by the Lessee known as "Huntsville Hospital", and Lessee has a need for 209 parking spaces for various employees of Lessee and Huntsville Hospital, which such need could be satisfied upon the construction of a fourth level to the proposed parking garage; and

WHEREAS, Lessee has agreed to pay a portion of the cost of constructing and developing, and the City has agreed to cause to be constructed and developed, a fourth level (the "Fourth Level") located at the top of the proposed parking garage that would contain room sufficient to provide 259 parking spaces, 209 of which would be reserved and used solely for employees of the Lessee and Huntsville Hospital, and the remaining 50 of which would be open for use by the general public on a first-come, first served basis or used as otherwise determined by the City.

NOW, THEREFORE, in consideration of the foregoing and in further consideration of the payment of General Expense Rent, Additional Services Rent, Capital Reserve Contributions, and other Additional Rent hereafter provided, the performance of all the terms, covenants, agreements, and conditions of this Lease by Lessee, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Lessee hereby desire to enter into this Lease pursuant to which the City will lease unto Lessee, and the Lessee will lease from City, the Health Care Authority Reserved Spaces (as defined herein) within the proposed parking garage on the terms and conditions set forth herein.

President of the City Council of the
City of Huntsville, Alabama
Date: _____

ARTICLE I
DEFINED TERMS

1.1 **Definitions.** Each reference in this Lease to any of the following terms shall have the meaning set forth below for each such term:

"Additional Rent" has the meaning set forth in Section 4.8.

"Additional Services Rent" has the meaning set forth in Section 4.3.

"Approved Parking Consultant" shall mean a licensed professional parking consultant or structural engineer selected by the City and reasonably acceptable to the Lessee.

"Capital Repair Items" means repairs of a capital nature that are intended to improve or extend the normal economic life of the Fourth Level.

"Capital Reserve" has the meaning set forth in Section 7.2.

"Capital Reserve Contributions" shall mean an annual contribution to be made to the Capital Reserve by Lessee as set forth in Section 4.4 hereof.

"City Parking Garage" means the parking garage containing spaces to accommodate approximately 692 vehicles, a bus-stop, and the Fourth Level, all located on the City Parking Garage Property.

"City Parking Garage Property" means Lot 4, according to the Plat of Twickenham Square Subdivision Plat.

"City Work" has the meaning set forth in Section 6.1.

"Commencement Date" means the date on which possession of the Premises is delivered to Lessee as specified in Section 6.2.

"CPI" means the All Items Consumer Price Index for All Urban Consumers, published from time to time by the U.S. Bureau of Labor Statistics.

"Default" means the occurrence or existence of any event which, but for the giving of notice or expiration of time or both, would constitute an Event of Default.

"Effective Date" means the date first set forth on the initial page of this Lease.

"Extension Term" has the meaning set forth in Section 3.2.

"Extraordinary Capital Costs Contribution" has the meaning set forth in Section 4.5.

"Extraordinary Capital Repairs" has the meaning set forth in Section 4.5.

"Force Majeure" means and includes any and all causes which could not have been foreseen or are beyond the control of a party and which are not the result of such party's fault, negligence, or deliberate act. Such causes include but are not restricted to, acts of the public enemy, acts of any government in either its sovereign or proprietary capacity, fires, floods, hurricanes, epidemics, quarantine restrictions, freight embargoes, or unusually severe weather (not including normal seasonal inclement weather).

"Fourth Level" shall have the meaning given to such term in the recitals hereof.

"FTA" means the United States Department of Transportation, Federal Transit Administration.

"General Expense Rent" has the meaning set forth in Section 4.2.

"General Expense Rent Adjustment Date" means each anniversary of the Commencement Date.

"Health Care Authority Reserved Spaces" means 209 of the spaces on the Fourth Level that the Lessee and City agree shall be used exclusively by the Lessee or Huntsville Hospital.

"Initial Term" has the meaning set forth in Section 3.1.

"Lease Term" and **"Lease Year"** shall have the meaning set forth in Section 3.2.

"Lessee Parties" means, collectively, the officers and employees of Lessee.

"Mortgagee" has the meanings set forth in Section 16.1

"Parking Plan" means the parking plan attached hereto as Exhibit "A" and made a part hereof. The Parking Plan indicates the location of the Health Care Authority Reserved Spaces on the Fourth Level.

"Permitted Use" has the meaning set forth in Section 5.1.

"Person" means a natural person, partnership, firm, association, corporation, trust, governmental agency, municipal corporation, public corporation, administrative tribunal or other form of business or legal entity.

"Plans and Specifications" means the final plans and specifications for the City Parking Garage.

"Premises" means the Health Care Authority Reserved Spaces.

"Refurbishment Contribution" has the meanings set forth in Section 7.3.

"Refurbishment Repairs" has the meanings set forth in Section 7.3.

"Related Leases" means, collectively, the following leases, each dated of even date herewith, between the City, as the lessor, and the following entities, as lessees, with respect to the remaining components of the project described in the Development Agreement:

- City Parking Garage Lease Agreement (Multifamily Component) with Twickenham pursuant to which, among other things, Twickenham has leased certain parking spaces on the first three floors of the City Parking Garage for the benefit of a multifamily housing component of the project described in the Development Agreement.
- City Parking Garage Lease Agreement (Retail Component) with Twickenham pursuant to which, among other things, Twickenham has leased certain parking spaces on the first three floors of the City Parking Garage for the benefit of the grocery store component of the project described in the Development Agreement.
- City Parking Garage Lease Agreement (Project A Component) with Gallatin pursuant to which, among other things, Gallatin has leased certain parking spaces on the first three floors of the City Parking Garage for the benefit of a commercial component of the project described in the Development Agreement.
- City Parking Garage Lease Agreement (Project B Component) with Gallatin pursuant to which, among other things, Gallatin has leased certain parking spaces on the first three floors of the City Parking Garage for the benefit of what is currently proposed to be a hotel component of the project described in the Development Agreement.

"Related Lessees" means the lessees under the Related Leases and their permitted successors and assigns.

"Related Lessees Refurbishment Repairs" means the rehabilitation, refurbishment, or replacement necessary to continue the efficient operation of the City Parking Garage in compliance with the Operating Standard (all as defined as "Refurbishment Repairs" in Section 7.3(a) of each of the Related Leases).

"Rent" means, collectively, General Expense Rent, Additional Services Rent, Capital Reserve Contributions, and Extraordinary Capital Costs Contributions.

"Twickenham Square Subdivision Plat" means the Plat of Twickenham Square Subdivision, recorded as Instrument Number 201204270000257150 in the Office of the Judge of Probate of Madison County, Alabama.

ARTICLE II
PREMISES; USAGE OF CITY PARKING GARAGE

2.1 Lease of the Designated Parking Spaces. City does hereby lease and rent unto the Lessee and the Lessee does hereby take as Lessee under this Lease for the Lease Term, and upon all of the terms and conditions set forth herein, on an exclusive, reserved basis, the Health Care Authority Reserved Spaces to be located on the Fourth Level as shown on the Parking Plan, to be used by the Lessee solely for the Permitted Use. The City hereby agrees with Lessee that, throughout the Lease Term, upon the terms and conditions set forth herein, the City shall provide Lessee and the Lessee Parties with access to the Fourth Level, as and to the extent contemplated herein.

2.2 Reserved

2.3 Access to Health Care Authority Reserved Spaces; Enforcement of Rights. (a) The City covenants and agrees to provide Lessee and Lessee Parties reasonable access of ingress and egress to the Premises through such means as shall be reasonably determined by the City.

(b) Anything in this Lease to the contrary notwithstanding, whether express or implied, Lessee agrees that neither Lessee nor any Lessee Parties that park in spaces within the City Parking Garage other than the Health Care Authority Reserved Spaces shall exit the Parking Garage without paying the full cost charged to the general public (other than those members of the general public that qualify as "Lessee Parties" under any of the Related Leases) for such parking (the "Parking Covenant"); and, further, Lessee from time to time shall educate Lessee Parties regarding the restrictions on use of floors one through three of the City Parking Garage and will utilize its parking and personnel policies to assist the City in enforcing the Parking Covenant.

(c) Lessee understands, acknowledges and agrees that access to the Health Care Authority Reserved Spaces may be permitted by special gate or other special entrance device (the "Fourth Level Gate") located on the Fourth Level or at such other location within the City Parking Garage that the City shall determine supports the most efficient and convenient operation of the City Parking Garage. Each parking card provided to Lessee and Lessee Parties may be programmed by the City so that the user thereof will not be permitted to exit the City Parking Garage without paying the regular hourly parking rate charged to the general public (excluding those members of the general public that qualify as "Lessee Parties" under any of the Related Leases) for parking with the City Parking Garage, unless:

- i. the parking card was used to gain initial access to the City Parking Garage (the "First Swipe"),

- ii. the parking card was used to open the Fourth Level Gate to access the Health Care Authority Reserved Spaces (the "SecondSwipe"),
- iii. the Parking Card was used to open the Fourth Level Gate to exit the Health Care Authority Reserved Spaces (the "Third Swipe") not sooner than fifteen (15) minutes following the Second Swipe, and
- iv. The Parking Card was used to exit the City Parking Garage within fifteen (15) minutes of the Third Swipe.

Any gating and entrance/exit technology that may be utilized for this purpose shall be compatible with, and to the extent possible obtained from the vendor of, the gating and entrance/exit technology utilized for the remaining portions of the City Parking Garage. To the extent the parking technology utilized at the City Parking Garage does not enable the City to properly enforce the Parking Covenant, the City shall be permitted to use whatever other technology or methods as shall be reasonable or desirable to accomplish the same; provided such technology permits Lessee and Lessee Parties reasonable access of ingress and egress to the Premises.

(d) Upon request of Lessee, the City will promptly provide enforcement against vehicles that are unlawfully parked in the Health Care Authority Reserved Spaces, including towing and ticketing at the reasonable discretion of the City.

2.4 Health Care Authority Reserved Spaces. (a) The Health Care Authority Reserved Spaces will be located as shown on the Parking Plan or elsewhere on the Fourth Level as the City and Lessee may otherwise agree in writing. At all times during the Lease Term, Lessee shall have the right to require that the City cause the Health Care Authority Reserved Spaces to be painted and to erect such reasonable signage, as shall indicate to the public the use of such spaces for the Permitted Use. Furthermore, with respect to the Health Care Authority Reserved Spaces only, Lessee will have the right, at its sole cost, to engage courtesy personnel (though such personnel may not hold themselves out to be personnel or employees of the City, or to have enforcement authority on behalf of the City Parking Garage or any other Person) to educate the public as to appropriate parking areas in the City Parking Garage and to place non-adhesive paper flyers on the windshields of vehicles that are not lawfully parked within a Health Care Authority Reserved Space. Notwithstanding the foregoing, in no event shall any agent, employee or contractor of Lessee have any right or authority to make physical contact with any Person within the City Parking Garage, or to affix any item on, or tow or otherwise make contact with any vehicles located therein.

(b) Lessee hereby understands, acknowledges and agrees that all parking spaces located on the Fourth Level other than the Health Care Authority Reserved Spaces (such spaces, the "Unreserved Fourth Level Spaces") shall be available to the general public on a first-come, first-served basis, and nothing herein shall be deemed to give Lessee any special rights or privileges respecting the Unreserved Fourth Level Spaces or the use thereof.

- 2.5 Reserved.
- 2.6 Reserved.
- 2.7 Reserved.

ARTICLE III

TERM

3.1 Initial Term. Subject to and upon the terms and conditions set forth herein, this Lease shall continue in force for a term of seventy-five (75) years ("Initial Term") commencing on the Commencement Date. The Initial Term shall terminate on the last day of the month following the seventy-fifth (75th) anniversary of the Commencement Date. The parties shall, within ten (10) days after the Commencement Date, execute a Confirmation of Lease in the form of Exhibit "B" setting forth the Commencement Date.

3.2 Extension Term. Provided that no Event of Default (as hereinafter defined) by Lessee shall then have occurred and be continuing, Lessee shall have the option to extend the Lease Term for one (1) extension term of twenty-four (24) years (the "Extension Term") upon the terms and conditions as herein set forth. Lessee shall exercise its option to extend this Lease for the Extension Term by delivering written notice to City of its election to exercise such option not more than one hundred eighty (180), and at least one hundred twenty (120), days prior to the expiration of the Initial Term. The Extension Term shall be upon all of the terms and conditions contained in this Lease. As used herein, "Lease Term" shall mean, collectively, the Initial Term and the Extension Term, and "Lease Year" shall mean each successive period of twelve (12) calendar months following the Commencement Date throughout the Lease Term. Notwithstanding anything contained herein to the contrary, Lessee shall not have the right to extend the Lease Term if as of the date of its notice purporting to exercise such extension option, or the final day of the Initial Term, an Event of Default has occurred which is continuing.

ARTICLE IV

RENTAL

4.1 Rental In consideration of this Lease, Lessee covenants and agrees to pay to City Rent comprised of General Expense Rent, Additional Services Rent, Capital Reserve Contributions, and Extraordinary Capital Costs Contributions, all as set forth in this Article IV.

4.2 General Expense Rent.

(a) Lessee covenants and agrees to pay to the City rent (herein called "General Expense Rent") equal to \$3,553 (*i.e.*, \$17.00 times 209 spaces) per calendar month; provided, (i) that at the end of each calendar year during which this Lease is in effect the City shall determine the amount, if any, by which the total actual utility cost of the City Parking Garage, less the actual utility cost of the Fourth Level (the "Utility Cost") for such

calendar year exceeds the sum of \$10,000 (any such excess, the "Utility Cost Excess"), and there shall be added to the General Expense Rent due during each month of the immediately succeeding calendar year such amount as shall equal the Utility Cost Excess divided by 12.

(b) General Expense Rent (other than that portion thereof constituting Utility Cost) shall be increased annually as of the General Expense Rent Adjustment Date by the annual average percentage change in CPI for the immediately preceding calendar year; provided, that in no event shall General Expense Rent be decreased below the amount of General Expense Rent for the immediately preceding Lease Year.

(c) General Expense Rent shall be payable in advance on the Commencement Date and thereafter on or before the fifth (5th) day of each calendar month during the Lease Term. If the Commencement Date occurs on a date other than the first day of a month, General Expense Rent for such month shall be prorated on the basis of the actual days in such month.

4.3 Additional Services.

(a) To the extent additional services of the City are requested by Lessee in writing (for example, parking attendants or enforcement personnel), the cost of such additional services will be paid by the Lessee as Additional Rent under this Lease ("Additional Services Rent"). Additional Services Rent will be payable monthly to the City in addition to General Expense Rent.

(b) If the City determines, in its reasonable discretion, that, in order to ensure the efficient and effective operation of the City Parking Garage due primarily to the use of the Lessee, the services of one or more parking attendants are required, then the City shall be entitled to charge, and Lessee hereby agrees to pay, Additional Rent in an amount equal to 22.0% of the City's actual expenses incurred in obtaining such services for the City Parking Garage. Additional Rent payable under this Section 4.3(b) shall commence on the first day of the calendar month immediately following the date on which the City provides written notice to Lessee of the hiring of the parking attendant(s) described in this Section.

(c) In addition to the foregoing, if the City determines, in its reasonable discretion, that other services beyond those contemplated in this Lease are reasonably required to effectively operate the City Parking Garage in accordance with the Operating Standard, then the City shall be entitled to charge, and Lessee hereby agrees to pay, Additional Rent in an amount equal to 22.0% of the City's actual cost of such services, payable on a monthly basis; provided, that the City hereby agrees that Lessee's Rent payments under this Lease shall not be increased pursuant to this Section 4.3(c) by more than five percent (5%) in any single Lease Year.

4.4 Capital Reserve Contributions.

(a) In addition to General Expense Rent and Additional Rent described in Section 4.3 hereof, Lessee shall pay \$8,360.00¹ (the "Capital Reserve Contributions") on an annual basis as set forth in Section 4.4(b).

(b) Capital Reserve Contributions shall be payable to the City annually commencing on the first (1st) anniversary of the Commencement Date and on each successive anniversary thereafter during the Lease Term.

(c) Capital Reserve Contributions shall be increased as of the Capital Reserve Adjustment Date by the aggregate annual average percentage change in CPI for the five (5) year period immediately prior to such Capital Reserve Adjustment Date; provided, that in no event shall the Capital Reserve Contributions be reduced below the amount thereof as in effect as of the last day of the Lease Year immediately preceding the Capital Reserve Adjustment Date.

4.5 Extraordinary Capital Costs Contributions. If there shall occur unforeseen, extraordinary capital repairs (excluding latent defects or insurable events) for the Fourth Level (the "Extraordinary Capital Repairs") prior to the 50th Lease Year, and if the Approved Parking Consultant recommends that such Extraordinary Capital Repairs should be undertaken in order to maintain the Fourth Level in compliance with the Operating Standard, the City will cause such Extraordinary Capital Repairs to be made, initially at the City's cost. City will provide Lessee with an itemized statement of City's actual costs incurred in making the Extraordinary Capital Repairs, together with such supporting documentation as shall be reasonably required by Lessee. Upon presentation of such documented costs, Lessee will be obligated pay to City the amount of such documented costs in equal monthly installments over the lesser of the remaining months in the Initial Term or 360 months, as Additional Rent hereunder, with interest thereon at six percent (6.0%) per annum.

4.6 Reserved.

4.7 Reserved.

4.8 General Provisions. (a) Rent and other sums to be paid by Lessee hereunder shall be payable in lawful money of the United States of America.

(b) All payments shall be made by Lessee to City without notice or demand, deduction or offset, except as otherwise expressly provided herein, at the address of City set forth below or at such other address as may be designated by City from time to time.

(c) All amounts payable by Lessee to City under the terms of this Lease other than

¹ Such number calculated by multiplying \$40.00 times the total number of Health Care Authority Reserved Spaces.

the General Expense Rent are collectively called "Additional Rent."

ARTICLE V PERMITTED USE

5.1 Use. The Premises shall be used by Lessee and occupied for parking by the employees of Lessee or as otherwise agreed by the City and the Lessee (the "Permitted Use"). Any other use of the Premises by Lessee shall require the prior written approval, in each instance, of the City by the Mayor or the Director of Parking and Public Transit, such approval not to be unreasonably withheld, conditioned or delayed.

ARTICLE VI CONSTRUCTION OF FOURTH LEVEL

6.1 Payment of Costs of Construction of Fourth Level. (a) Prior to the time the City is to award the contract for construction of the City Parking Garage, the Lessee shall remit and pay to the City the sum of \$2,148,520 (the "Construction Deposit"), which such sum represents the estimated increased cost of constructing and developing the City Parking Garage as a result of the addition of the Fourth Level and shall be held in a special fund or account of the City for the construction of the City Parking Garage (the "Construction Fund"). The City covenants and agrees to use the Construction Deposit solely for the purpose of constructing, developing and equipping the City Parking Garage.

(b) Notwithstanding any provision to the contrary contained in this Agreement, if, after the construction contract for development of the City Parking Garage is approved by the City, Lessee requests a change order relating to the City Parking Garage, the City shall not be obligated to submit such change order to the City Council for approval or to otherwise act upon such request unless and until an amount equal to the aggregate cost to be incurred as a result of such change order is paid to the City in immediately available funds by the Lessee. Such amount shall be deposited into the Construction Fund and used as described in Section 6.1(a) above.

(c) Lessee hereby acknowledges and confirms that it has received and reviewed, or has been given access for its review of, the Plans and Specifications for the construction and development of the City Parking Garage.

6.2 City Work. City will cause to be performed all work in connection with the construction of the City Parking Garage, and will cause to be taken all steps necessary to deliver the Premises to Lessee in a fully completed condition ready for lawful use and occupancy ("turn key") for the Permitted Use, in accordance with the Plans and Specifications and this Lease (the "City Work"). The City will work in good faith towards an August 31, 2013 target completion date for the City Parking Garage. However, the City shall not be liable for the failure to deliver possession of the Premises, and the entering into of this Lease shall not be considered as a guarantee or assurance of possession until same is actually delivered. Notwithstanding the foregoing, (i) City will assign Lessees and the Related Lessees all liquidated damages under its construction contracts to the extent that the City

Parking Garage is not timely completed, and (ii) City will enforce all appropriate remedies against the contractor and design professional to the extent the City determines the City Parking Garage is not constructed in a workmanlike manner compliant with the approved Plans and Specifications and with all applicable building codes and regulations. City makes no representation or warranty as to the construction quality of the City Parking Garage, and makes no commitment as to the date the City Parking Garage will be completed.

6.3 Delivery of Possession. City shall give Lessee thirty (30) days' written notice in advance of the date on which the City Parking Garage is expected to be completed. Within five (5) days following the actual date on which the City Parking Garage is completed, City shall deliver possession of the Premises to Lessee. City shall use commercially reasonable efforts to cause to be completed all punchlist and other requirements included in City's Work, no later than thirty (30) days after delivering possession of the Premises to Lessee.

6.4 Completion Documents. Simultaneously with delivery of possession of the Premises to Lessee, the City shall furnish Lessee a certificate of occupancy or any equivalent permit or certificate which may be required by any governmental authority having jurisdiction prior to commencement of business operations at or from the Premises.

6.5 Lessee's Inspection. Lessee shall, on or before the Commencement Date, examine the Premises, and satisfy itself with the physical condition thereof. Lessee's taking possession of the Premises shall be conclusive evidence of receipt of them in good order and repair, except as otherwise specified, and Lessee agrees that no representation as to condition or repair has been made except as is contained in this Lease and that no promise to decorate, alter, or improve the Premises has been made except such as is contained in this Lease.

ARTICLE VII
MAINTENANCE AND REPAIRS; REFURBISHMENT OF FOURTH LEVEL

7.1 Operating Standard.

(a) At all times during the Lease Term, City shall maintain, repair, and generally operate the City Parking Garage in a manner consistent with other City of Huntsville public parking garages (the "Operating Standard") at the time of any date of determination, and otherwise in material compliance with the preventative maintenance schedule set forth on Exhibit "C" attached hereto.

(b) City shall at its cost be responsible for all operating expenses and maintenance of the Premises, including but not limited to, annual cost of operation of the Premises, maintenance wages, salaries, payroll taxes and insurance of any personnel employed by City, janitorial costs (including regular sweeping of the floors of the Premises), utilities, waste disposal, equipment and supplies relating to the operation and use of the Premises as a parking garage. All painting (including painting necessary to remove any graffiti of the walls and ceiling of the City Parking Garage) shall be performed by City at its expense. Regular cleaning and maintenance of garage premises stairwells, garage elevators and garage elevator lobbies shall be performed by City at its expense.

(c) Lessee shall permit no waste of the Premises nor allow the same to be done, but Lessee shall take good care of the same and Lessee is and shall be responsible and liable for any damage done to the Premises by Lessee or Lessee's employees or invitees. City shall permit no waste of the Premises nor allow the same to be done, but City shall take good care of the same.

(d) Lessee shall on the termination of this Lease surrender to City the quiet and peaceable possession of the Premises in like good order as at the Commencement Date, normal wear and tear excepted, and shall not remove any item which has been affixed to the Premises.

7.2 Capital Reserve.

(a) City shall establish a capital repair reserve (the "Capital Reserve") to be used in connection with Capital Repair Items, which will be funded from the Capital Reserve Contributions made by the Lessee under this Lease. The Capital Reserve shall be established and held by the City in a segregated fund or account for the benefit of the Fourth Level and shall not be commingled with the general funds of the City.

(b) The City shall have the right to withdraw and use funds from the Capital Reserve to pay for Capital Repair Items or Refurbishment Repairs, as and to the extent that City has determined, in its reasonable discretion, that such Capital Repair Items or Refurbishment Repairs are necessary to maintain the Fourth Level in compliance with the

Operating Standard. To the extent that such repairs are in excess of \$100,000, the City's determination shall be supported by a written recommendation from the Approved Parking Consultant that such repairs are necessary to maintain the Fourth Level in compliance with the Operating Standard.

7.3 Refurbishment Repairs.

(a) At any time after the 50th Lease Year, City shall have the right to obtain a report from the Approved Parking Consultant to determine the scope of rehabilitation, refurbishment, or replacement necessary to continue the efficient operation of the City Parking Garage in compliance with the Operating Standard (the "Refurbishment Repairs").

(b) City will be allowed to use the funds in Capital Reserve to fund the cost of the Refurbishment Repairs referable to the Fourth Level. If the total funds contained in the Capital Reserve are not sufficient to pay the cost of constructing such Refurbishment Repairs, City will provide a written statement to Lessee setting forth the amount of the anticipated shortfall and the amount that will be due and payable by Lessee (the "Refurbishment Contribution"). Lessee will be required to pay its Refurbishment Contribution within ninety (90) days of City's written notice as Additional Rent under this Lease. To the extent Lessee fails to pay its Refurbishment Contribution within such ninety (90) day period, the same will constitute an Event of Default of the Lessee hereunder.

(c) Notwithstanding the foregoing, or any other provision contained in this Lease to the contrary, if Lessee timely pays its Refurbishment Contribution, but less than all of the Related Lessees pay their respective shares of the Related Lessees Refurbishment Repairs as required under the Related Leases within ninety (90) days of City's written notice to such Related Lessees in accordance with the Related Leases, then the City's obligations under this Lease shall automatically, and without any further action on the part of any Person, be reduced and the City may provide a smaller scale parking garage or surface parking to Lessee hereunder and, so long as such smaller scale parking garage or surface parking provides Lessee with the same number of Health Care Authority Reserved Spaces, the City shall be deemed to have satisfied its obligations hereunder and Lessee's obligations hereunder shall continue unabated throughout the remainder of the Lease Term.

ARTICLE VIII **INSURANCE; INDEMNITY**

8.1 City's Insurance Requirements.

(a) At all times during the Lease Term, City shall maintain, provide or cause to be provided, at its own expense, insurance against loss or damage to the City Parking Garage by fire, wind storm, hail and such other risks as are included in so called "all-risk extended coverage" endorsements, all written at replacement cost value (exclusive of the cost of foundations, excavations and footings), and with a replacement cost endorsement, naming the City as "loss payee." If required by Alabama law, in connection with the

operation and maintenance of the City Parking Garage, City shall maintain and keep in full force or effect workers' compensation insurance to the extent required by Alabama law.

(b) City shall deliver to the Lessee copies of the policies of insurance required under Section 8.1(a) or certificates evidencing the existence and amounts of such insurance with loss payable clauses as required by this Article VIII and will list Lessee and Lessee's mortgage lender, if any, as additional insured as their interests may appear. No such policy shall be cancelable or subject to reduction of coverage or other modification except after thirty (30) days prior written notice to Lessee and Lessee's Mortgagee (as hereafter defined). City shall, at least thirty (30) days prior to the expiration of such policies, furnish Lessee and Lessee's Mortgagee with renewals or "binders" thereof. All insurers shall have a rating of [A-V] or better, and shall be qualified to do business and in good standing under the laws of the State of Alabama.

(c) If City at any time during the Lease Term fails to procure or maintain any insurance required hereunder or to pay the premiums therefor, Lessee shall have the right (but not the obligation), unless within ten (10) days after written notice City procures the same, to procure the same and to pay any and all premiums thereon, and any amounts paid by Lessee in connection with the acquisition of such insurance may be deducted from rent due hereunder.

8.2 Lessee's Insurance Requirement.

(a) Lessee shall, at Lessee's expense, obtain and keep in force during the Lease Term commercial general liability insurance against claims of personal injury or death and property damage caused by an occurrence upon, in or about the Premises, affording a minimum coverage of not less than \$1,000,000 combined single limit and naming City as "additional insured."

(b) Lessee shall deliver to the City copies of the policies of insurance required under Section 8.2(b) or certificates evidencing the existence and amounts of such insurance with additional insured clauses as required by this Article VIII. No such policy shall be cancelable or subject to reduction of coverage or other modification except after thirty (30) days prior written notice to City. Lessee shall, at least thirty (30) days prior to the expiration of such policies, furnish City with renewals or "binders" thereof. All insurers shall have a rating of [A-V] or better, and shall be qualified to do business and in good standing under the laws of the State of Alabama.

(c) If Lessee at any time during the Lease Term fails to procure or maintain any insurance required hereunder or to pay the premiums therefor, the City shall have the right (but not the obligation), unless within ten (10) days after written notice Lessee procures the same, to procure the same and to pay any and all premiums thereon, and any amounts paid by City in connection with the acquisition of insurance shall be due and payable by the Lessee to City within thirty (30) days after written demand to Lessee, and Lessee shall pay to City upon demand the full amount so paid and expended by Lessee. Failure to pay any amounts so due shall constitute an Event of Default by Lessee hereunder.

8.3 Waiver of Subrogation. Notwithstanding anything to the contrary contained in this Lease, City and Lessee each waive any and all rights to recover against the other, or against the officers, directors, shareholders, partners, joint venturers, employees, agents, customers, invitees or business visitors of such other party, for any loss or damage to such waiving party arising from any cause that is covered by any property insurance carried pursuant to this Lease, or any other property insurance actually carried by such party, **EVEN IF SUCH LOSS OR DAMAGE SHALL HAVE BEEN CAUSED BY THE FAULT OR NEGLIGENCE OF THE OTHER PARTY OR ANYONE FOR WHOM SUCH PARTY MAYBE RESPONSIBLE.** City and Lessee, from time to time, will request their respective insurers to issue appropriate waiver of subrogation rights endorsements to all property insurance policies carried in connection with the Premises or the contents of same.

8.4 Blanket Policies. Any insurance provided for in this Article VIII may be effected by a blanket policy or policies of insurance, or under so called "all-risk" or "multi peril" insurance policies, provided that the amount of the total insurance available with respect to the Premises shall provide coverage and indemnity at least equivalent to separate policies in the amounts herein required, and provided further that in other respects, any such policy or policies shall comply with the provisions of this Article. Any increased coverage provided by individual or blanket policies shall be satisfactory, provided the aggregate liability limits covering the Premises under such policies shall otherwise comply with the provisions of this Article.

8.5 Indemnity. Lessee shall indemnify and hold harmless City from and against any and all claims arising from the Lessee's negligence or willful misconduct in the operation or use of its Premises, or arising from any negligence or willful misconduct of any of the Lessee Parties from and against all costs, attorney's fees, expenses and liabilities reasonably incurred in the defense of any such claim or any action or proceeding brought thereon (provided, however, that Lessee shall have no obligation to indemnify, defend or hold harmless City to the extent such claims are caused by the negligence or willful misconduct of City, its officers, agents, employees or contractors); and in case any action or proceeding be brought against City by reason of any such claim, Lessee upon notice from City shall defend the same at Lessee's expense by counsel chosen by Lessee, unless City shall have a reasonable objection to same. Any of Lessee's indemnification obligations under this Lease shall also extend to the Federal Transit Administration (the "FTA") and Federal Department of Transportation (the "DOT") so long as the City Parking Garage is subject to any federal interest. City acknowledges and agrees that this indemnity shall be limited to claims against the Lessee and in no event shall the same extend to the members of the board of directors or the officers of Lessee. The provisions of this Section 8.5 shall survive the termination of this Lease.

8.6 Exemption from City Liability. Lessee hereby agrees that City shall not be liable for injury to Lessee's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Lessee, Lessee's employees, tenants, customers, invitees, guests, contractors, visitors, or any other person in or about the Premises, nor shall City be liable for injury to the person of Lessee, Lessee's agents, employees, tenants,

customers, invitees, guests, contractors, or visitors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wire, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, where the said damage or injury results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part and which are not the result of the actions of the City. **In addition to, and not in limitation of, the foregoing, Lessee hereby acknowledges and agrees, for itself and on behalf of its agents, employees, tenants, customers, invitees, guests, contractors, and visitors, that the use of the City Parking Garage by any person is done at his, her or its own risk, and that the City shall not be responsible for any loss, damage or expense incurred by any user of the City Parking Garage, including, without limitation, any loss or damage to any vehicle, or to any personal property contained within or on any such vehicle. The foregoing shall in no event, however, be deemed to constitute a release of the City from claims due to the actions, willful misconduct, or inaction of the City in violation of this Agreement.**

8.7 Damage, Destruction, Obligation To Rebuild, Rent Abatement. In the event of any damage or full or partial destruction or loss of the City Parking Garage, then Lessee shall have the right to elect in writing (such writing to be delivered to the City not less than 20 days following the event causing the full or partial destruction or loss of the City Parking Garage) to terminate this Lease and for the City to remit that portion of insurance proceeds referable to the Fourth Level (the "Fourth Level Insurance Proceeds") to the Lessee. Should Lessee not elect to terminate this Lease as aforesaid, then, to the extent proceeds from insurance cover the cost thereof, City shall repair any damage or rebuild the City Parking Garage to its condition immediately prior to such damage or destruction. For any total loss or damage that exceeds fifty percent (50%) of the total area of the City Parking Garage, the Rent payable under Article IV shall abate until such damage has been repaired or reconstruction has been completed; provided, that nothing contained in this Section 8.7 shall, or shall be deemed to, modify or otherwise affect Lessee's obligations under Article VII. If such damage or destruction occurs during the final twelve (12) months of the then-current Lease Term, City may in its discretion elect not to rebuild, and in such event all insurance proceeds payable as a result of the loss shall be paid over to City, less and except the Fourth Level Insurance Proceeds which shall be paid to the Lessee, and upon such payment this Lease shall terminate and be of no force and effect.

ARTICLE IX

UTILITIES AND TAXES

9.1 Utilities, Taxes and Other. City will pay all utility charges for the Premises, and all sewer service charges, garbage collection fees, occupancy taxes and any and all other municipal license fees, or charges which may hereinafter be imposed by the county or municipality wherein the Premises is located. City shall pay all ad valorem taxes (if any) for the Premises.

ARTICLE X RESERVED

ARTICLE XI COVENANT OF TITLE AND QUIET ENJOYMENT

11.1 Representations and Warranties on Execution of Lease. City hereby represents and warrants that: (i) City is the owner of the Premises and has the full right and power to make this Lease; (ii) on paying the Rent herein reserved and on performance of the terms and conditions of this Lease on the part of Lessee to be performed, Lessee shall peacefully and quietly enjoy the Premises and the other benefits afforded hereby at all times during the Lease Term and Lessee shall have uninterrupted access to the Premises at all times during the Lease Term to the same extent as the general public; and (iii) the Premises are now zoned for, and are free from all encumbrances which would materially interfere with, Lessee's use of the Premises for the Permitted Use.

11.2 Nondisturbance and Recognition Agreement. City shall, as a condition to the Lessee's obligations under this Lease, cause the fee owner of the Premises to deliver to Lessee a Nondisturbance and Recognition Agreement in the form attached as Exhibit "E" hereto.

ARTICLE XII SUBLEASE AND ASSIGNMENT

12.1 Sublease and Assignment. Lessee shall not partially assign or transfer this Lease to any third party without City's prior written consent in City's discretion, and Lessee shall not assign or transfer this Lease in whole to any third party without City's prior written consent, which consent will not be unreasonably withheld, conditioned, or delayed; notwithstanding the foregoing, City's consent shall not be required for a transfer of this Lease to any purchaser of Huntsville Hospital. To the extent that City fails to grant its approval within thirty (30) days after its receipt of a written request from Lessee, with submission of the required information on the proposed transferee, the City's consent shall be deemed approved. Lessee may assign this Lease and Lessee's interest herein to any lender as collateral for any leasehold mortgage on this Lease, without obtaining the consent of the City. Any transfer, assignment deed, or deed in lieu of foreclosure to any such lender made pursuant to such lender's rights under its collateral documents shall be a permitted transfer or assignment and will not require the consent of City.

12.2 Assignment by City. In the event of the transfer and assignment by City of its interest in this Lease to a Person expressly assuming City's obligations under this Lease, City shall thereby be released from any further obligations hereunder, and Lessee agrees to look solely to such successor in interest of City for performance of such future obligations. Any security given by Lessee to secure performance of Lessee's obligations hereunder shall be assigned and transferred by City to such successor in interest and City shall thereby be discharged of any further obligation relating thereto.

ARTICLE XIII

DEFAULTS; REMEDIES

13.1 **Lessee Event of Default.** The occurrence of any of the following shall constitute an "**Event of Default**" by Lessee hereunder:

(a) Lessee shall fail to pay when due any installment of Rent or Additional Rent owing to City or any other obligation under this Lease involving the payment of money to City and such failure shall continue unremedied for a period of thirty (30) days after written notice of such failure is received by Lessee.

(b) Lessee shall fail to comply with any provision of this Lease, other than as described in subsection (a) above, and shall not cure such failure within sixty (60) days after receipt of written notice thereof from City (except that this 60-day period shall be extended for a reasonable period of time if the failure is not reasonably capable of cure within said 60-day period and Lessee promptly commences efforts to cure such failure and continues diligently thereafter all efforts necessary to cure such failure).

(c) Lessee shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.

(d) Lessee shall file a petition under any section or chapter of the federal Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, or Lessee shall be the subject of proceedings filed against Lessee under any such laws, and such proceedings are not discharged within sixty (60) days after commencement.

(e) A receiver or trustee shall be appointed for the Premises or for all or substantially all of the assets of Lessee and such receiver or trustee is not discharged within sixty (60) days following the date of appointment.

13.2 **Remedies.** Upon the occurrence of any Event of Default, subject to the City's compliance with the provisions of Section 15.1, the City shall have the option to pursue anyone or more of the following remedies:

(a) Terminate Lessee's rights respecting the Health Care Authority Reserved Spaces, in which case the Health Care Authority Reserved Spaces will be converted to spaced available to use by the general public on a first-come, first-served basis or as otherwise determined by the City, and any access equipment or rights, parking cards, tokens, or access equipment or licenses allocated to Lessee for Authority Reserved Spaces will be deactivated and forfeited, until such Event of Default is cured to the satisfaction of the City; or

(b) Seek equitable or injunctive relief designed to cure the event of default or enforce the obligation with respect to such default, with the unsuccessful party in any such litigation being liable for all of the successful party's litigation costs, expenses and reasonable attorney's fees (including without limitation, such costs, expenses and fees

incurred for any appeals), all of which shall be included as part of any final judgment or decree with respect thereto; and/or

(c) Pursue any other remedy now or hereafter available to City under Alabama law.

13.3 City Event of Default. If City shall fail or refuse to perform or comply with any of its material obligations and covenants under this Lease, and shall continue in default for a period of thirty (30) days after Lessee has given City written notice of such default (specifying such default with particularity) and demand of performance, unless such default cannot reasonably be cured within thirty (30) days of written notice from Lessee, in which case a reasonable period of time shall be allowed for such cure, Lessee may, but shall not be obligated to, remedy same and pursue an action against City for specific performance (it being the understanding of the parties hereto that the obligations of the City hereunder are subject to the limitations imposed on public bodies, municipalities and public corporations by the Constitution of the State of Alabama and laws affecting the use and maintenance of public property; accordingly, Lessee shall not be entitled to any other damages whatsoever, including, without limitation, incidental or consequential damages, whether arising at law or in equity); however, it shall be the duty of Lessee in any event to use best efforts to mitigate Lessee's damages. Unless and until City fails to so cure any default after such notice, Lessee shall not have any remedy or cause of action by reason thereof. All obligations of City hereunder will be construed as covenants, not conditions. Any approval or consent of the City requested under this Lease shall be deemed granted if the City fails to respond otherwise within thirty (30) days of written request properly given.

ARTICLE XIV **RIGHT OF FIRST REFUSAL**

14.1 Right of First Refusal. Throughout the Lease Term, City shall grant and Lessee shall have a right of first refusal in the event the City decides to sell the City Parking Garage, as and to the extent set forth in this Section 14.1; provided, however, that the right of first refusal shall not apply to any sale or transfer to another public authority, public corporation or other governmental entity or agency. Lessee shall have the right to match any bona fide purchase offer to the City for all or any part of the City Parking Garage. In the event City receives a bona fide written offer from a third party to purchase all or any part of the Parking Garage which City is willing to accept, City shall promptly deliver by hand or by certified or registered mail addressed to Lessee as provided herein and in the Related Leases, a copy of such offer, omitting the name of the proposed buyer, and Lessee may, within thirty (30) days after said copy is so mailed or delivered by hand, elect to purchase the Parking Garage on the same terms and conditions set forth in such offer. If Lessee shall not accept such offer in writing within the time herein specified, and thereafter the sale to said third party is consummated in accordance with the offer presented to Lessee, said right of first refusal shall be automatically and without notice extinguished, but all remaining terms, covenants and conditions of this Lease shall continue in effect, provided, however, that if, for any reason, the sale to said third party is not consummated, the first right of refusal shall be automatically and

without notice restored as if said offer had never been made. If Lessee exercises this right of first refusal and accepts such offer, such written notice thereof to City shall create a binding purchase agreement between the parties upon the price, terms and conditions contained in the offer with respect to the Parking Garage or portion thereof covered by the offer.

14.2 Limitations on Right of First Refusal. Lessee hereby acknowledges that each of the Related Leases contains a right of first refusal granted to each of the Related Lessees thereunder that is identical to the terms set forth in Section 14.1. Notwithstanding the terms of Section 14.1 above, Lessee hereby acknowledges and agrees that, in the event that Lessee fails to exercise its right of first refusal in the manner and within the time period set forth in Section 14.1, the election of one or more of the Related Lessees to exercise their respective rights of first refusal shall not constitute an offer giving rise to another right of first refusal on the part of Lessee. In addition to the foregoing, and not in limitation thereof, Lessee hereby agrees that, in the event that Lessee and one or more of the other Related Lessees exercise their respective rights of first refusal, Lessee's right to purchase the City Parking Garage on the terms and conditions contained in the offer received by the City, shall be limited to a right to purchase undivided interests in the property to be sold, jointly with the other Related Lessees who have timely exercised their respective rights of first refusal.

ARTICLE XV

MISCELLANEOUS

15.1 Mortgagee Provisions. If Lessee shall mortgage, pledge, collaterally assign or otherwise grant a security interest (the "Mortgage") its interest in and to this Lease to a Mortgagee (as hereafter defined), and if City is provided with a copy of such Mortgage and any related loan documents evidencing the indebtedness secured thereby that contain the definitions of the defined terms used therein by Lessee or such Mortgagee, together with a written statement confirming that such Mortgage is in full force and effect and encumbers the Lessee's interest in this Lease, then so long as the Mortgage shall remain unsatisfied, the following shall apply:

(a) City, upon serving Lessee with any notice of Default hereunder or under the provisions of, or with respect to, this Lease, shall also serve a copy of such notice upon the holder or holders of the Mortgage (such holder or holders, and its or their successors and assigns from time to time, each a "Mortgagee") (in the same manner as required by this Lease for notices to Lessee) at the address specified in the Mortgage, or at such other address as the Mortgagee shall designate in writing to City. No notice from City to Lessee shall be deemed to have been duly given unless and until a copy thereof has been so served.

(b) In the event that Lessee shall be in Default under this Lease, Mortgagee shall have the right, but not the obligation, to give written notice to the City within the existing cure periods set forth herein of its intention to, and thereafter remedy such Default, or cause the same to be remedied, within twenty (20) days after the expiration of all applicable grace or cure periods as provided in this Lease (or such additional period as may be necessary for Mortgagee to complete foreclosure in order for Mortgagee to complete cure), and City shall

accept such performance by or at the instance of the Mortgagee as if the same had been made by Lessee.

(c) Lessee and City shall not enter into any agreement providing for the surrender, cancellation, amendment or modification of this Lease and City shall not accept a surrender of this Lease from Lessee, without the prior written consent of Mortgagee, and no such surrender, cancellation, amendment or modification shall be binding on any Mortgagee who has not expressly consented to the same in writing.

15.2 Services. City shall in no event be liable for damages for stoppage of heat or electricity or water or for the machinery pertaining to the Premises breaking or getting out of order, or being out of repair provided, however, that nothing contained herein shall limit or reduce City's obligation to repair the Premises as provided in this Lease.

15.3 Right of Entry. City in person or by agent shall have the right at all reasonable times to enter the Premises and inspect the same.

15.4 Risk of Loss. All personal property placed in the Premises, or in the store rooms or in any other portion of said Premises or any place appurtenant thereto, shall be at the risk of Lessee, or the parties owning same, and neither City nor City's agents shall be liable for the loss of or damages to such property or for any act or negligence of any tenants or agents of tenants or occupants or of any other person whomsoever in or about the City Parking Garage, except for losses occurring as a result of the negligence or willful misconduct of City or City's agents.

15.5 Attorney's Fees and Waiver of Personal Property. In the event City employs an attorney to collect any rents or other charges due hereunder by Lessee, or to protect the interest of City under this Lease or in the Premises, or in the event Lessee violates any of the terms, conditions, or covenants on the part of the Lessee herein contained, the City shall be entitled to recover from Lessee, in addition to any damages awarded, the reasonable fees and expenses (including attorney's fees) incurred by the City provided that the City is the prevailing party in such action. Likewise, in the event Lessee employs an attorney to protect the interest of Lessee under this Lease or in the Premises, or in the event City violates any of the terms, conditions, or covenants on the part of the City herein contained, the Lessee shall be entitled to recover from City, in addition to any damages awarded, the reasonable fees and expenses (including attorney's fees) incurred by the Lessee provided that the Lessee is the prevailing party in such action..

15.6 No Implied Waiver. The failure of either party to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in this Lease shall not be construed as a waiver or a relinquishment thereof for the future.

15.7 Partial Payment. No payment by Lessee or receipt by City of a lesser amount than the installments of Rent or Additional Rent due under this Lease shall be deemed to be other than payment on account of the earliest rent due, nor shall any endorsement or statement

on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and City may accept such check or payment without prejudice to City's right to recover the balance of such rent or pursue any other remedy provided in this Lease.

15.8 Relationship of Parties. Nothing contained or implied in this Lease shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent, nor any other provisions contained herein, nor any acts of the parties herein, shall be deemed to create any relationship between the parties hereto other than the relationship of City and Lessee.

15.9 Severability. The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

15.10 Time of Essence. Time is of the essence.

15.11 Amendments. This Lease contains all agreements of the parties with respect to any matter relating to the Lessee's rights respecting certain portions of the Premises. This Agreement may be modified in writing only, signed by the parties hereto. Except as otherwise stated in this Lease, Lessee hereby acknowledges that neither City nor any employees or agents of City has made any oral or written warranties or representations to Lessee relative to the condition or use by Lessee of said Premises and Lessee acknowledges that Lessee assumes all responsibility regarding the Occupational Safety Health Act, the legal use and adaptability of the Premises and the compliance thereof with all applicable laws and regulations in effect during the Lease Term except as otherwise specifically stated in this Lease.

15.12 Waivers. No waiver by either party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by either party of the same or any other provision. Either party's consent to or approval of, any act shall not be deemed to render unnecessary the obtaining of either party's consent to or approval of any subsequent act by the other party. The acceptance of rent hereunder by City shall not be a waiver of any preceding breach by Lessee of any provision hereof, other than the failure of Lessee to pay the particular rent to accepted, regardless of City's knowledge of such preceding breach at the time of acceptance of such rent.

15.13 Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or equity.

15.14 Covenants and Conditions. Each provision of this Lease performable by Lessee shall be deemed both a covenant and a condition.

15.15 Binding Effect; Choice of Law. This Agreement shall bind the parties, their personal representatives, successors and assigns. This Agreement shall be governed by the laws of the State of Alabama.

15.16 Consents. Except as otherwise required herein, wherever in this Lease the consent of one party is required to an act of the other party such consent shall not be unreasonably withheld, conditioned or delayed.

15.17 Authority. Each of Lessee and the City hereby represents and warrants that it has the full right and authority to enter this Lease upon the terms and conditions herein set forth, and that upon Lessee paying the fees provided herein and observing and performing all of the covenants, conditions and provisions on Lessee's part to be observed and performed hereunder, Lessee shall be entitled to the rights of Lessee herein set forth during the Lease Term hereof. The individuals executing this Lease have received authorization from the governing body of such party to execute this Lease and are legally capable of executing this Lease.

15.18 Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of said party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease, together with attorney's fees and expenses incurred by said party in obtaining such adjudication.

15.19 Compliance with Laws; Nuisance. In connection with Lessee's use of the Premises, Lessee shall comply with (i) all federal, state and municipal laws, including all laws, rules and regulations of the DOT or FTA, and including all zoning and land use laws and ordinances, rules and orders that apply to the Premises and (ii) any and all requirements of any insurance organization or company necessary for the maintenance of reasonable fire and public liability insurance covering the Premises. Lessee shall neither store, use or sell any article in or about the Premises, nor permit any act that would cause a cancellation of any policy upon the Premises. Lessee shall not occupy, suffer or permit the Premises or any part thereof to be used in any other way contrary to the law or the rules or regulations of any public authority. Any laws, regulations, rules or guidelines changed, amended or otherwise determined to be applicable by the federal government during the Lease Term shall be applicable to this Lease and Lessee agrees therewith. Lessee shall not commit, or suffer to be committed, any waste upon the Premises, or any public or private nuisance, or any other act or thing which may disturb the quiet enjoyment of any neighbors of the Premises. Lessee shall not conduct or permit to be conducted any sale by auction in, upon or on the Premises.

15.20 Memorandum of Lease. The parties hereto shall execute and acknowledge a memorandum of this Lease in the form attached as Exhibit "D," which shall be recorded in the real property records of the Office of the Judge of Probate of Madison County, Alabama. Lessee shall be responsible for all costs incurred in connection with the recording of such Memorandum.

15.21 Notices. Any notice to be given hereunder shall be deposited in the U.S. mail, duly registered or certified, with postage prepaid, and addressed as follows:

If to Lessee: The Health Care Authority of the City of Huntsville

Attention: _____

With a copy to:

and:

If to City: City of Huntsville
 308 Fountain Circle
 Huntsville, Alabama 35801
 Attention: City Attorney

or at such other address as either of the parties may hereafter designate in writing. Service of any such written notice shall be deemed complete five days after the mailing thereof, as hereinabove provided, or upon receipt, whichever is sooner.

15.22 Force Majeure. Notwithstanding anything in this Lease to the contrary, neither City nor Lessee shall be deemed in default with respect to the performance of any of the terms, covenants, and conditions of this Lease to be performed by them if any failure of its performance shall be due to Force Majeure, and the time for performance by either party shall be extended by the period of delay resulting from or due to any of said causes.

IN WITNESS WHEREOF, City and Lessee have executed this Lease on the day and year first above written.

[The remainder of this page intentionally left blank.]

[Signature page to City Parking Garage Leas Agreement (Health Care Authority)
for The City of Huntsville]

CITY:

ATTEST:

**CITY OF HUNTSVILLE, an Alabama
municipal corporation**

By: _____

Clerk-Treasurer

By: _____

Tommy Battle
Mayor

STATE OF ALABAMA)
 :
COUNTY OF MADISON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Tommy Battle and _____, whose names as Mayor and Clerk-Treasurer, respectively, of The City of Huntsville, an Alabama municipal corporation, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this date, that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand and official seal this the _____ day of _____, 2012.

[NOTARIAL SEAL]


Notary Public

My Commission Expires: _____

[Signature page to City Parking Garage Lease Agreement (Health Care Authority)
for Lessee]

Lessee:

**THE HEALTH CARE AUTHORITY OF
THE CITY OF HUNTSVILLE, ALABAMA,**
a public corporation under Alabama law

By: 
Name: David S. Spillers
Chief Executive Officer
Title: _____

STATE OF ALABAMA)
 :
COUNTY OF MADISON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that David S. Spillers, whose name as CEO of The Health Care Authority of the City of Huntsville, Alabama, a public corporation under Alabama law, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this date, that, being informed of the contents of the instrument, she/he executed the same voluntarily and with full authority as the act of said limited liability company.

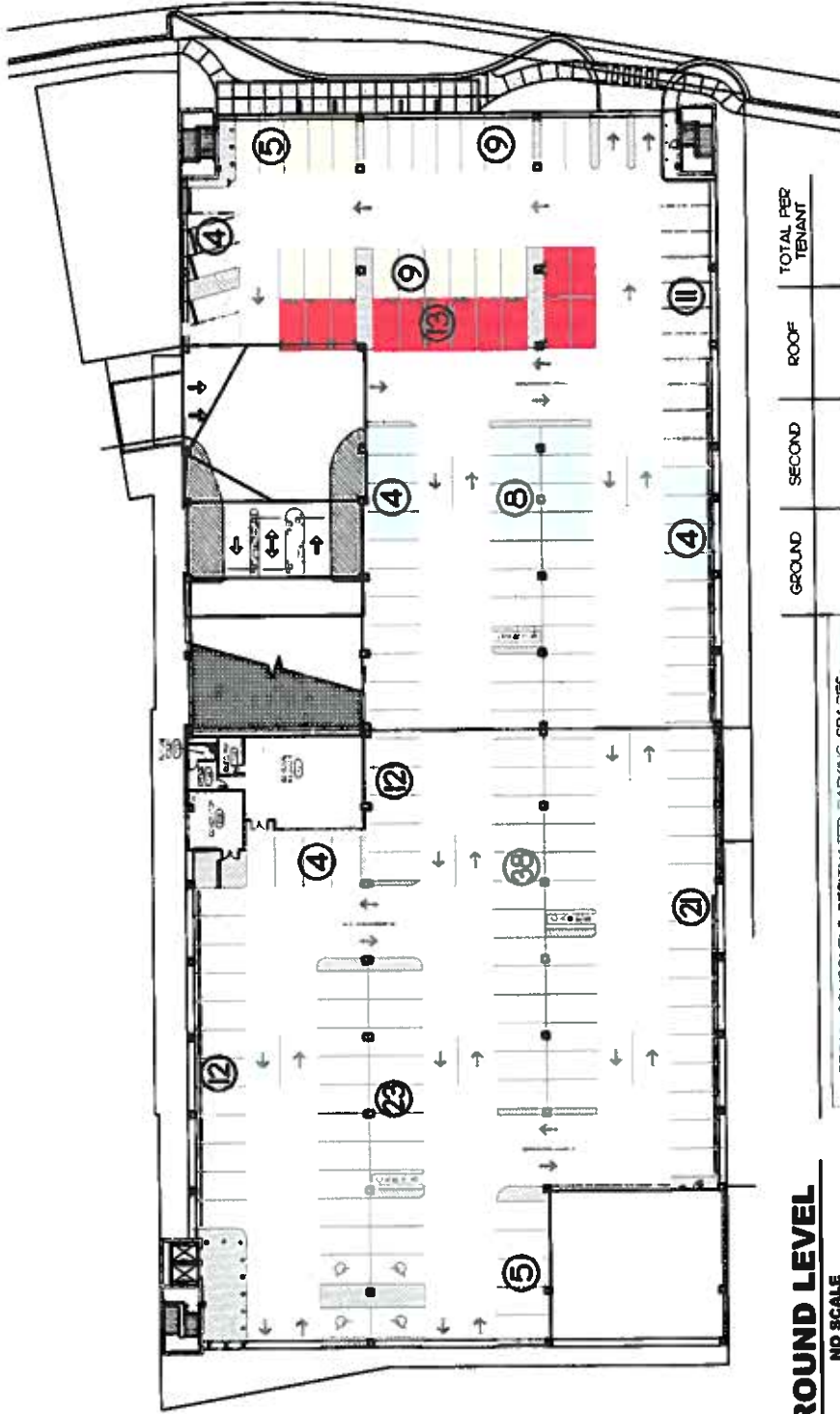
Given under my hand and official seal this the 9th day of July, 2012.

[NOTARIAL SEAL]


Notary Public
My Commission

Expires: 08-29-12

EXHIBIT A
PARKING PLAN

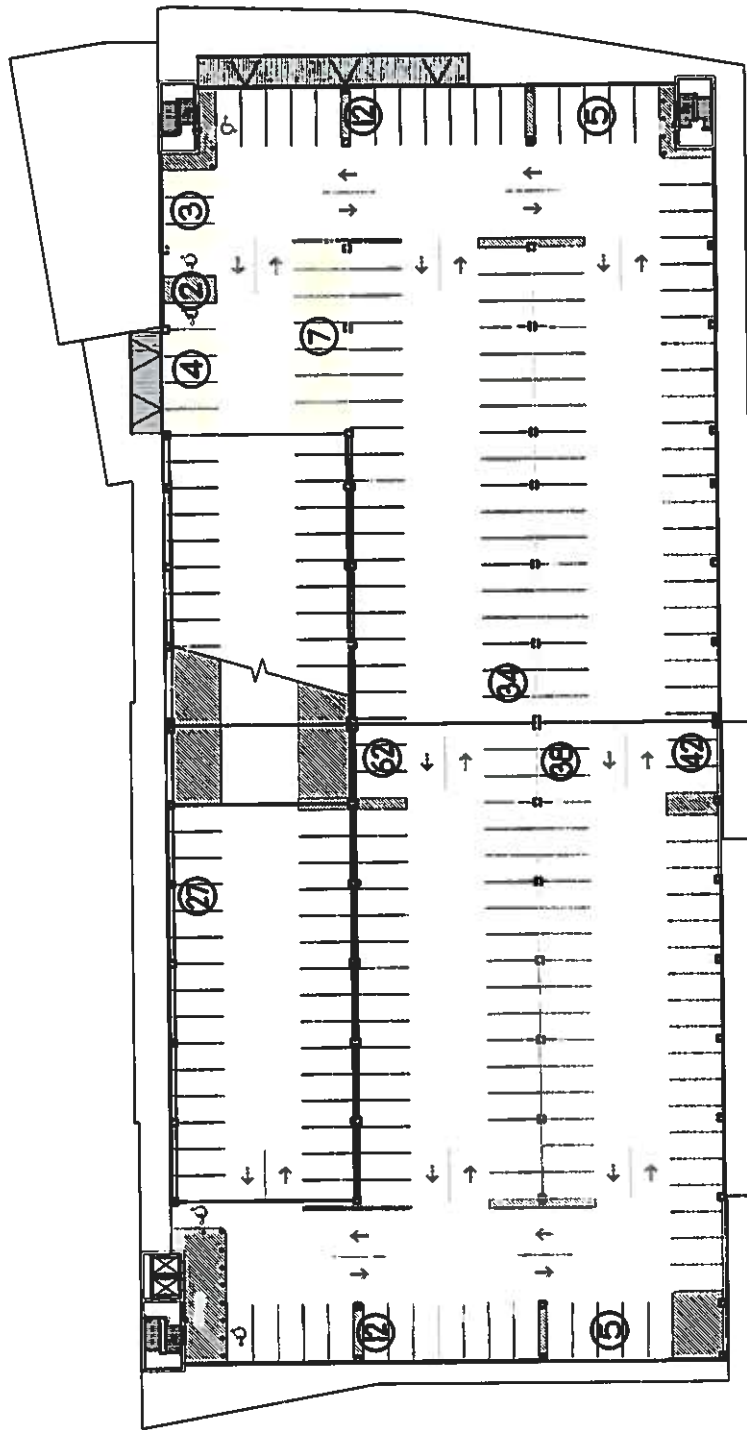


GROUND LEVEL

NO SCALE

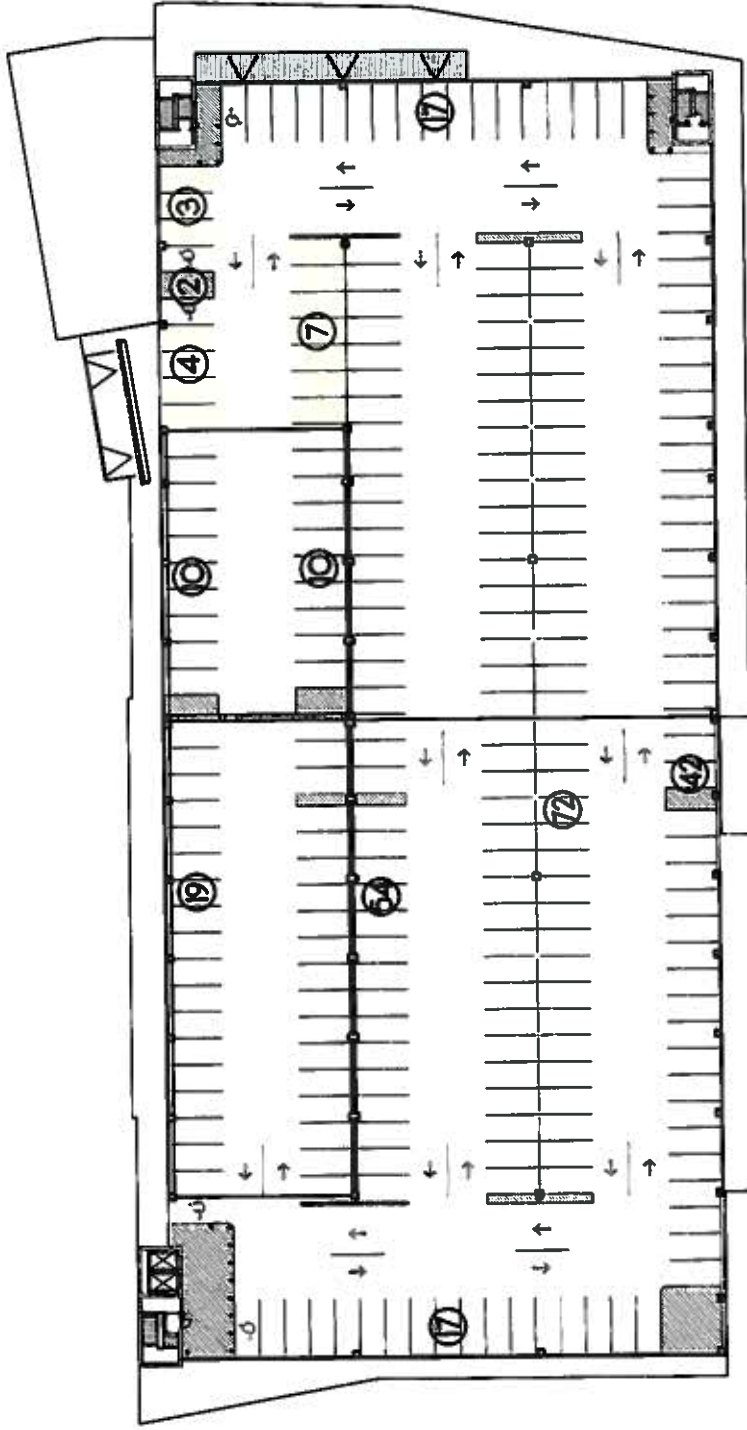
	GROUND	SECOND	ROOF	TOTAL PER TENANT
RETAIL COMPONENT DESIGNATED PARKING SPACES	15 SPACES	0 SPACES	0 SPACES	15 SPACES
PUBA DESIGNATED PARKING SPACES	16 SPACES	0 SPACES	0 SPACES	16 SPACES
RETAIL DESIGNATED PARKING SPACES	0 SPACES	90 SPACES	0 SPACES	90 SPACES
MULTIFAMILY COMPONENT DESIGNATED PARKING SPACES	13 SPACES	0 SPACES	0 SPACES	13 SPACES
ROOF COMPONENT DESIGNATED PARKING SPACES	14 SPACES	14 SPACES	14 SPACES	42 SPACES
OFFICE COMPONENT DESIGNATED PARKING SPACES	24 SPACES	149 SPACES	243 SPACES	416 SPACES
UNDESIGNATED PARKING SPACES				
				692 TOTAL SPACES

G



SECOND LEVEL
NO SCALE

	GROUND	SECOND	ROOF	TOTAL PER TENANT
RETAIL COMPONENT DESIGNATED PARKING SPACES	15 SPACES	0 SPACES	0 SPACES	15 SPACES
PLAZA DESIGNATED PARKING SPACES	16 SPACES	0 SPACES	0 SPACES	16 SPACES
RETAIL DESIGNATED PARKING SPACES	0 SPACES	90 SPACES	0 SPACES	90 SPACES
MULTIFAMILY COMPONENT DESIGNATED PARKING SPACES	13 SPACES	0 SPACES	0 SPACES	13 SPACES
MULTIFAMILY COMPONENT DESIGNATED PARKING SPACES	14 SPACES	14 SPACES	14 SPACES	42 SPACES
OFFICE COMPONENT DESIGNATED PARKING SPACES	24 SPACES	149 SPACES	243 SPACES	416 SPACES
UNDESIGNATED PARKING SPACES				
				692 TOTAL SPACES



THIRD LEVEL

NO SCALE

	GROUND	SECOND	ROOF	TOTAL PER TENANT
RETAIL COMPONENT DESIGNATED PARKING SPACES	15 SPACES	0 SPACES	0 SPACES	15 SPACES
PUBLIC DESIGNATED PARKING SPACES	16 SPACES	0 SPACES	0 SPACES	16 SPACES
RETAIL DESIGNATED PARKING SPACES	0 SPACES	90 SPACES	0 SPACES	90 SPACES
MULTIFAMILY COMPONENT DESIGNATED PARKING SPACES	13 SPACES	0 SPACES	0 SPACES	13 SPACES
SITE COMPONENT DESIGNATED PARKING SPACES	14 SPACES	14 SPACES	14 SPACES	42 SPACES
OFFICE COMPONENT DESIGNATED PARKING SPACES	24 SPACES	149 SPACES	243 SPACES	416 SPACES
UNDESIGNATED PARKING SPACES				
				692 TOTAL SPACES

R

EXHIBIT B

CONFIRMATION OF LEASE

CONFIRMATION OF CITY PARKING GARAGE LEASE AGREEMENT (HUNTSVILLE HOSPITAL)

THIS CONFIRMATION OF CITY PARKING GARAGE LEASE AGREEMENT (PROJECT A COMPONENT) (this "Confirmation") is made this ____ day of _____, 20__, by and between **THE CITY OF HUNTSVILLE**, an Alabama municipal corporation (the "City") and **THE HEALTH CARE AUTHORITY OF THE CITY OF HUNTSVILLE**, a public corporation under the laws of the State of Alabama ("Lessee").

WHEREAS, the City and Lessee have entered into that certain City Parking Garage Lease Agreement (Huntsville Hospital) dated July __, 2012 (the "Lease");

WHEREAS, the Commencement Date, as described in the Lease, is dependent upon the occurrence of certain events; and

WHEREAS, those certain events have occurred and the City and Lessee now desire to specific the Commencement Date for purposes of establishing the term of the Lease.

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Lessee warrant and represent each to the other as follows:

1. The Commencement Date is _____.
2. The expiration of the initial seventy-five (75) term of the Lease is _____
3. As more particularly described in Section 3.2 of the Lease, Lessee has the option to extend the term of the Lease for one (1) twenty-four (24) term or such lesser period of time as, when added to the Initial Term, shall equal 99 years from the execution date of the Lease.
4. Lessee has been granted a right of first refusal to purchase the City Parking Garage, as more particularly provided in Sections 14.1 and 14.2 of the Lease.
5. The Lease is now in full force and effect and all terms and conditions of the Lease are ratified and confirmed.

[Signature Page Follows]

IN WITNESS WHEREOF, the City and Lessee have caused this Confirmation to be executed by their respective duly authorized representatives as of the date first above written.

CITY:

ATTEST:

CITY OF HUNTSVILLE, ALABAMA

By: _____
Clerk-Treasurer

By: _____
Tommy Battle
Mayor

LESSEE:

**THE HEALTH CARE AUTHORITY OF THE
CITY OF HUNTSVILLE**

By: _____
Name: _____
Title: _____

EXHIBIT C

PREVENTATIVE MAINTENANCE SCHEDULE

1. Maintenance and inspections –

Includes overall garage, bus shelter, all equipment and structural systems;

DAILY MAINTENANCE – Garage and Bus Shelter

1. Pick up/remove all loose debris;
2. Empty garbage receptacles;
3. Inspect all stairwell, interior, and perimeter lighting;
4. Walk stairwells and elevators to inspect for safety hazards;
5. Clear floor drains;
6. Remove graffiti at garage and Bus Shelter;
7. Inspect, clean and refill all restrooms as needed;
8. Inspect panic/safety button operation and camera operation every morning, if applicable;
9. Inspect operation of phone in elevator and exit lanes;

WEEKLY MAINTENANCE – Garage and Bus Shelter

1. Vacuum/sweep with Back Pack and Supervac;
2. Damp wipe all garbage receptacles;
3. Inspect and recharge/replace Fire Extinguishers for discharge/operational;
4. Wipe down and or dust all equipment;
5. Clean oil spots as needed;

QUARTERLY MAINTENANCE – Garage and Bus Shelter

1. Wash down of entire garage floors and walls;
2. Clean all handrails and other railing as applicable;
3. Inspect Emergency Lighting proper function, repair if necessary;
4. Clean all glass, windows, etc;
5. Conduct major wash down of complete garage to remove all contaminants;
6. Conduct back-up power system test (Generator) for 10 minutes to ensure proper operation;

ANNUAL MAINTENANCE – Garage and Bus Shelter

1. Formerly 'hot test' Emergency Generator and Switch Gear and repair as necessary;
2. Service and repair as needed Generator, or as specified for product if sooner than annually;
3. Conduct an Infrared test of all Electrical Panels and Gears and repair as necessary;
4. Service Emergency Lighting, or as specified for product if sooner than annually;
5. Service all Fire Extinguishers;
6. Inspect all structural systems as listed;
7. Conduct walk through of elevator for state compliance prior to official state inspection;
8. Elevator State Inspection;

PERIODIC CAPITAL MAINTENANCE – Garage and Bus Shelter

1. Repaint stall stripes and other pavement markings;
2. Repaint surfaces as needed, Approximately every 6 to 8 years;
3. Check caulking at joints for cracking every 5 years;

The following will be inspected and maintained per manufacturer's recommendations and repaired or replaced as needed;

A. EQUIPMENT –

Inspections at Garage and Bus Shelter

Inspect for proper function and corrosion control –

- Any equipment observed to have signs of corrosion should be cleaned and properly painted (if applicable) to maintain integrity of equipment
1. Inspect all access control equipment;
 2. Inspect all trailblazer (directional) signs, ADA assist equipment;
 3. Inspect all security systems;
 4. Inspect all electrical equipment, including lights & emergency lights;
 5. Inspect carbon monoxide monitors, if applicable;
 6. Inspect fire protection systems, if applicable;
 7. Inspect for floor & roof/ceiling damage;
 8. Inspect AC/HVAC as applicable;

Lubricate and maintain all equipment as specified by manufacturer.

B. STRUCTURAL SYSTEM

Inspect structural elements of entire facility

1. Inspect top surfaces of all floors and bottoms of parking floors;
2. Inspect columns;
3. Inspect beams;
4. Inspect guardrails and handrails (to verify they are rigid and safe);
5. Inspect stairways;
6. Inspect walls;
7. Inspect connections and bearing pads in precast concrete system;
8. Inspect wheel stops;
9. Inspect for spalling (flaking) & cracking of concrete;
10. Inspect for cracking at concrete joints;
11. Inspect for rusting, paint scaling & cracks, especially at joints of steel structures;

Areas of deterioration, water leakage, or corrosion of exposed metals will be noted and repaired as necessary. If significant cracking, spalling or deterioration is found a qualified engineer experienced in parking structures will provide follow up inspection and consultation as to corrective actions necessary.

EXHIBIT D

MEMORANDUM OF LEASE

This instrument prepared by:

Jason Avery, Esq.
Bradley Arant Boult Cummings LLP
1819 Fifth Avenue North
Birmingham, Alabama 35203
Telephone (205) 521-8000

MEMORANDUM OF CITY PARKING GARAGE LEASE AGREEMENT **(HUNTSVILLE HOSPITAL)**

This Memorandum of City Parking Garage Lease Agreement (Project A Component) (this "Memorandum") is entered into this ___th day of July, 2012, by and between **THE CITY OF HUNTSVILLE**, an Alabama municipal corporation (the "City"), and **THE HEALTH CARE AUTHORITY OF THE CITY OF HUNTSVILLE**, a public corporation under the laws of the State of Alabama ("Lessee").

Recitals

A. The City and Lessee have entered into that certain City Parking Garage Lease Agreement (Huntsville Hospital) (the "Lease") dated July __, 2012, pursuant to which the City has demised and let to Lessee the number of Health Care Authority Reserved Spaces (such number being 209) allocated to the Lessee on the fourth level of the City Parking Garage (the "Premises"), located in Huntsville, Madison County, Alabama. Unless otherwise defined herein, capitalized terms shall have the meaning given to them in the Lease.

B. The City and Lessee desire to execute this Memorandum, which is to be recorded in the Public Records of Madison County, Alabama, in order that third parties may have notice of the estate of Lessee in the Premises and of the Lease.

Agreement

NOW, THEREFORE, in consideration of the rents and covenants provided for in the Lease to be paid and performed by Lessee, the City does hereby demise and let unto Lessee the Premises on the terms, and subject to the conditions set forth in the Lease, among which are the following:

1. **TERM.** Subject to and upon the terms and conditions of the Lease, the Initial Term of the Lease shall be for a period of seventy-five (75) years, commencing on the Commencement Date.

2. **EXTENSION PERIOD.** As more particularly described in Section 3.2 of the Lease, Lessee has the option to extend the term of the Lease for one (1) twenty-four (24) term or

such lesser period of time as, when added to the Initial Term, shall equal 99 years from the execution date of the Lease.

3. **RIGHT OF FIRST REFUSAL.** Lessee has been granted a right of first refusal to purchase the City Parking Garage, as more particularly provided in Sections 14.1 and 14.2 of the Lease.

4. **SUCCESSORS; ASSIGNS.** The terms, covenants and conditions contained in this Memorandum shall be binding upon, and shall inure to the benefit of, the parties hereto, their respective heirs, legal representatives, successors and assigns.

5. **INCORPORATION OF LEASE TERMS BY REFERENCE.** All of the terms, conditions, provisions and covenants of the Lease are incorporated in this Memorandum by reference as though written out at length herein. In the event of any inconsistency between the provisions of this Memorandum and those of the Lease, the provisions of the Lease shall control. Copies of the Lease are held by both the City and Lessee.

[Signature Pages Follow]

IN WITNESS WHEREOF, the City and Lessee have caused this Memorandum to be executed by their respective duly authorized representatives as of the date first above written.

CITY:

ATTEST:

CITY OF HUNTSVILLE, ALABAMA

By: _____
Clerk-Treasurer

By: _____
Tommy Battle
Mayor

STATE OF ALABAMA)
 :
COUNTY OF MADISON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Tommy Battle and Charles E. Hagood, whose names as Mayor and Clerk-Treasurer, respectively, of The City of Huntsville, an Alabama municipal corporation, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this date, that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand and official seal this the _____ day of _____, 2012.

[NOTARIAL SEAL]

Notary Public
My Commission Expires: _____

LESSEE:

**THE HEALTH CARE AUTHORITY OF THE
CITY OF HUNTSVILLE**

By: _____

Name: _____

Title: _____

STATE OF ALABAMA)
:
COUNTY OF MADISON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of The Health Care Authority of the City of Huntsville, a public corporation under the laws of the State of Alabama, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this date, that, being informed of the contents of the instrument, she/he executed the same voluntarily and with full authority as the act of said authority.

Given under my hand and official seal this the _____ day of _____, 2012.

[NOTARIAL SEAL]

Notary Public
My Commission Expires: _____

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Legal

Council Meeting Date: 7/26/2012

Department Contact: Peter Joffrion

Phone # 5026

Contract or Agreement: Parking Garage Lease

Document Name: City Parking Garage Lease Agreement between the City of Huntsville and The Health ...

City Obligation Amount: NA

Total Project Budget:

Uncommitted Account Balance:

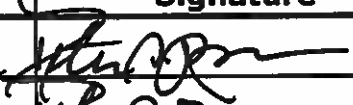
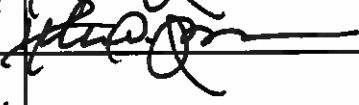
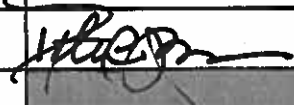
Account Number:

Procurement Agreements

<u>Select...</u>	<u>Select...</u>
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Grant-Funded Agreements

<u>Select...</u>	Grant Name: <u></u>
------------------	---------------------

Department	Signature	Date
1) Originating		7-6-12
2) Legal		7-6-12
3) Finance		
4) Originating		7-6-12
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		